

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**ERIK MARCO GARCIA-BARTOLO,**

**Defendant.**

**CASE NOS. 8:09CR58,  
8:09CR193, 8:09CR215**

## TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 58).<sup>1</sup> The government adopted the PSR (Filing No. 59). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the lack of an adjustment for the safety valve in ¶ 45. The objection will be heard at sentencing, and the burden is on the Defendant by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objection to ¶ 45 will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

<sup>1</sup>Case numbers refer to 8:09CR58.

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 16<sup>th</sup> day of February, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge